

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PASQUALE DIPOFI,

Petitioner,

v.

C. EICHENLAUB,

Respondent,

Civil No. 2:08-10635

HONORABLE PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

OPINION AND ORDER DENYING THE MOTION TO AMEND JUDGMENT

On July 14, 2008, this Court denied petitioner's application for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. *DiPofi v. Eichenlaub*, 2008 WL 2745143 (E.D.Mich. July 14, 2008). On August 4, 2008, petitioner filed a motion to amend judgment with the Court pursuant to Fed. R. Civ. P. 59(e). While this motion was pending, petitioner filed a notice of appeal with the United States Court of Appeals for the Sixth Circuit on September 2, 2008. **[Docket No: 16]**. For the reasons stated below, the motion to amend judgment is DENIED.

It is well settled that the filing of a notice of appeal transfers jurisdiction over the merits of the appeal to the appellate court. *Workman v. Tate*, 958 F. 2d 164, 167 (6th Cir. 1992). Because petitioner has filed a notice of appeal, this Court lacks jurisdiction to amend its original opinion and order to consider the merits of petitioner's case. *Id.* at 167-68. In light of the fact that a notice of appeal has been filed, this Court likewise does not have the authority to re-open petitioner's habeas case pursuant to Fed. R. Civ. P. 59. *See Jones v. Kolb*, 83 Fed. Appx. 779, 781 (6th Cir. 2003); *See also Raum v. Norwood*, 93 Fed. Appx. 693, 695 (6th Cir. 2004)(Plaintiffs deprived district court of jurisdiction over their motion for reconsideration by filing notice of

appeal before district court had chance to make decision on motion to reconsider).

IT IS HEREBY ORDERED that Petitioner's Motion to Amend Judgment Under Rule 59(e) [Docket No: 14, filed August 4, 2008] is **DENIED**.

SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: September 11, 2008

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on September 11, 2008.

s/Denise Goodine
Case Manager